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ABORIGINAL POLITICAL REPRESENTATION: A REVIEW OF SEVERAL JURISDICTIONS

Peter Niemczak

Célia Jutras
Law and Government Division

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ABORIGINAL POLITICAL REPRESENTATION: A REVIEW OF SEVERAL JURISDICTIONS

INTRODUCTION

It has been asserted that the political needs of Aboriginal people are not being met within the current electoral system.(1) For example, Nils Lasko has said:

> ... the history of many indigenous peoples shows that the indigenous populations have had great problems in communicating with the nation-state and that they are frequently excluded from the general processes of decision-making. They have little influence on various questions concerning their welfare within the administration and other power bodies of the state. It is difficult for indigenous people to have their demands and wishes adhered to.(2)

Aboriginal people around the world have expressed frustration with their lack of both political representation in and influence on government operations. This lack of decision-making power is partially due to demographics. In Canada for example, Aboriginal people currently represent 3.8% of the national population,(3) yet they are numerical minorities in all federal electoral ridings in the 10 provinces. The Aboriginal population is too evenly distributed across the country to influence the electoral outcome. Another factor contributing to the limited Aboriginal political representation may be the minimal Aboriginal participation in the electoral

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(1) See Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Vol. 1, Ottawa, 1991, p. 169-171; Senator Len Marchand, *Aboriginal Electoral Reform – A Discussion Paper*, 1990, p. 7-12; and "The Provincial Electoral Process: Indian Political Representation," a Submission by the Anishinabek Nation to the Standing Committee of the Legislative Assembly, Government of Ontario, 24 April 1989, p. 1.

(2) Nils Lasko, "The Importance of Indigenous Influence on the System of Decision-Making in the Nation-state," in *Self-determination and Indigenous Peoples: Sami Rights and Northern Perspectives*, IWGIA, Copenhagen, 1987, p. 78.

(3) Statistics Canada, "Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census," *The Daily*, 15 January 2008, http://www.statcan.ca/Daily/English/080115/d080115a.htm.

process. In Canada, only 27 self-identifying Aboriginal people, out of 10,384 available seats,[4] have been elected to the House of Commons since Confederation in 1867. Furthermore, Aboriginal people have only recently been entitled to vote in federal elections. Inuit were given the right to vote in 1950 and Indians on reserves were granted that right in 1960.

Efforts have been made in several jurisdictions to increase the political representation, and thus the decision-making power, of Aboriginal people. This paper will review government activity, both outside and within Canada, aimed at providing Aboriginal people with some form of special political representation.

THE INTERNATIONAL EXPERIENCE

Several countries have recognized the need for Aboriginal people to have some guaranteed input into the political process. Steps towards achieving this goal have been taken by the governments in Fennoscandia, the New Zealand Parliament and by the State legislature of Maine, U.S.A.. In addition, several jurisdictions have taken preliminary steps toward guaranteeing Aboriginal people some form of electoral representation.

A. The Sami Parliaments of Fennoscandia

The Aboriginal population of Fennoscandia, the Sami, are dispersed over the territories of Finland, Norway and Sweden. The governments of these three countries have provided Aboriginal representation for the Sami through the creation of separate Aboriginal parliaments. These elected bodies are subordinate to the national Parliaments and typically function as advisory bodies on issues affecting the Sami.

1. Finland

The Government of Finland began moving towards the creation of a separate Sami Parliament in 1971, when the Finnish State Commission on Sami Affairs was established. One of the recommendations in the Commission's 1973 report was the establishment of a separate body to represent the interests of the Sami minority.

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(4) This figure includes 961 seats available at by-elections and 9,423 seats available at general elections since 1867.

A Cabinet Decree (A 824/73) implementing the Commission's recommendation was signed by the President of Finland in 1973. The decree established the Finnish Sami Parliament, officially known as the Delegation for Sami Affairs, and four Sami constituencies in northern Finland; it set the number of members sitting in the Sami Parliament at 21.(5) At least 12 of these members are elected from the four Sami constituencies in Northern Finland, while the remaining 9 members are elected according to popular Sami vote and are drawn from all regions of Finland, both inside and outside the four Sami constituencies.(6)

The system for determining Sami electoral eligibility was also outlined in the 1973 Cabinet decree. Those individuals and their spouses who are eligible can self-identify as Sami voters on the census, which has been collecting data on Aboriginal origin since 1962.

The Sami Parliament does not have the authority to make decisions binding on the national Parliament, the local authorities or their administrations. It has the power only to make recommendations to these authorities on matters affecting Sami interests. The Sami Parliament is also responsible for naming some representatives to public boards at the county, provincial and national levels of government.(7)

One of the criticisms of this system of Sami political representation is that the Parliament "has no direct powers of decision-making. ... It is [the Sami Parliament's] experience that the authorities of Finland are not positive towards our demands. Some have been listened to, but by far the majority have been ignored."(8)

Another criticism of the Sami Parliament is that it is subordinate, not only to the national Parliament but also to officials within the Ministry of the Interior.

2. Norway

The Norwegian Government in 1980 established the Norwegian Sami Rights Commission to inquire into the political, economic and cultural needs of the Sami. One of the recommendations in the Commission's 1984 report called for the creation of a separate Sami

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(5) *Sami Parliament Act*, 1995, c. 4, s. 38, http://www.finlex.fi/en/laki/kaannokset/1995/en19950974.pdf.

(6) Pekka Aikio, "Experiences Drawn from the Finnish Sami Parliament," in *Self-determination and Indigenous Peoples: Sami Rights and Northern Perspectives*, IWGIA, Copenhagen, 1987, p. 94.

(7) W. Rudnicki and H. Dyck, "The Government of Aboriginal Peoples in Other Countries," in *Arduous Journey: Canadian Indians and Decolonization*, edited by J. Rick Ponting, McClelland and Stewart, Toronto, 1986, p. 382.

(8) Aikio (1987), p. 97.

Parliament. Legislation, the *Sami Act*, was enacted in 1987, establishing this Parliament, for which elections were first held in 1989. Sami voters elect three members to each of the 13 constituencies established by the Act.

To be included on the Sami Electoral Register, a person must self-identify as a Sami and either have Sami as his or her home language or have a parent or grandparent who does.

Norway's Sami Parliament, much like its Finnish counterpart, is an advisory body with the power to make recommendations to both public authorities and private institutions on matters affecting the Sami.[9]

3. Sweden

Movement towards providing the Sami of Sweden with some form of political representation developed at a slower pace than in Finland and Norway. Significant gains in this area were realized by the Sami only in the late 1980s and early 1990s. The Swedish Cabinet in 1983 appointed a commission of inquiry into Sami affairs, which released its main report in 1989. One of the key recommendations was to establish an elected body to represent the interests of the Sami in Sweden.

In December 1992, the Swedish Government passed legislation creating a separate Swedish Sami Parliament.[10] This new Sami Parliament (the *Sameting*) is composed of 31 members elected by popular vote from Sami voters across the country. The Parliament is an advisory body with the power to make recommendations to national and local institutions. The *Sameting* is also authorized to allocate funds, such as State grants and money in the "Sami Fund," for public purposes. Another important role of the new Sami Parliament is to direct Sami language projects and to appoint the board of the Sami school system.

Aboriginal people in Sweden can be placed on the *Sameting* voter register by self-identifying as a Sami or by having a parent who is or was on the register.[11]

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(9) Bradford Morse and David Hawkes, "Alternative Methods for Aboriginal Participation in Processes of Constitutional Reform," in *Options for a New Canada*, ed. Ronald L. Watts and Douglas M. Brown, University of Toronto Press, Toronto, 1991, p. 181; and Len Sillanpaa, *The Development of Saami Assemblies in Fennoscandia: Towards Aboriginal Self-Government*, Department of Indian Affairs and Northern Affairs, Ottawa, 1992.

(10) The first elections were held on 16 May 1993.

(11) Robert Eronn, "The Sami, Indigenous People of the North," in *Current Sweden*, No. 397, March 1993, and Len Sillanpaa (1992).

B. New Zealand

The Maori people of New Zealand were the first settlers of the islands and represent approximately 14.6% of the country's total population.(12) In 1867, the Government of New Zealand moved towards providing the country's Aboriginal population with political representation in government by enacting the *Maori Representation Act*. The legislation was initially enacted as only a temporary measure providing for four special Aboriginal constituencies. These constituencies were superimposed on the existing 72 ridings for the House of Representatives and spanned the entire country. The electors in the Maori constituencies were thus guaranteed a Maori member of Parliament, with the same powers, privileges and perquisites as the other members of the House of Representatives. The preamble to the original Act stated that it was designed to help protect Maori interests in the House of Representatives. Several other factors have also been identified as likely reasons for the introduction of this legislation; they include a need to pacify the Maori people, the desire to assimilate the Maori, and an attempt to safeguard settlers' interests until the Maori land was acquired and secured. It has also been suggested that the legislation was introduced to preclude any Maori attempt to establish a separate power base, and to placate the British Colonial Office over government confiscation of Maori land.(13)

The New Zealand Parliament in 1993 passed legislation that contained significant amendments to the country's electoral law.(14) In this legislation, provision was made to correct a long-standing fault of the old *Maori Representation Act*, whereby the number of separate Maori seats was not allowed to vary. Under the amendments to the electoral law, the number of Maori electoral seats can rise or fall depending on the number of Maori voters registered on the Maori electoral roll. Following the implementation of this legislation in 1994, the number of guaranteed Maori seats in the 1996 general election was set at five. It should be noted that the 2005 general election resulted in the election of a total of 21 Maori members, representing 17.3%

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(12) These population figures are current as of the 2006 census, http://www.stats.govt.nz/people/communities/māori/default.htm.

(13) Augie Fleras, "From Social Control towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand," *Canadian Journal of Political Science* 18:3, 1985, p. 556.

(14) Following referendums in 1992 and 1993, New Zealand changed its electoral system from being first-past-the-post to mixed-member-proportional. Following the 2005 general election, the Chamber of the House of Representatives contained 62 general electoral seats, 52 selected from party lists, and 7 seats set aside as Maori seats. See *New Zealand Parliament*, http://www.parliament.nz/en-NZ/MPP/.

of the total seats.[15] As a result of increases in the size of the Maori electoral roll, the number of guaranteed Maori seats has been set at seven for the upcoming 2008 general election.[16]

All registered Maori are entitled to vote in the Maori ridings. The registration process, called the Maori Electoral Option, is performed every five years, shortly after the quinquennial census. Registered voters may not change electoral lists until the next Maori Electoral Option.

The system of guaranteed Maori seats has regularly come under criticism on both social and functional grounds. Some opponents of the system point to several surveys indicating that the New Zealand electorate does not wholly support the idea of separate representation.[17] Reasons for this have included: 1) that the seats are "racist" because they are allocated on the basis of race, not geography; and 2) that the system discriminates against other minorities who have similar claims.[18]

A structural difficulty with the system was that Maori electoral riding boundaries were not adjusted every five years to reflect population shifts, an exercise that was completed regularly for general electoral riding boundaries.[19] This difficulty was corrected with the 1993 amendments.

A continuing failing of the New Zealand system is the size of the Maori ridings. The seven Maori members represent less than 6% of the seats in Parliament, yet the ridings span the entire country. Considering the size of the Maori ridings, these members of Parliament must find it very difficult to represent and service their constituents at the same high level as other members of the Parliament.

Despite the criticisms of the New Zealand system, it has remained a part of the country's parliamentary structure for more than 100 years. While there are calls for reform and abolition of the Maori seats, there are also calls for their retention. The system provides the Maori with a voice in the House of Representatives that it might otherwise not have. Some Maori leaders view guaranteed Maori seats as "a vital component of their cultural heritage ... and

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(15) Elections New Zealand, *Māori, Pacific and Asian MPs 1990–2005*, http://www.elections.org.nz/democracy/electorates/ethnicity-mps.html.

(16) Elections New Zealand, Maori Electoral Option, 2008, http://www.elections.org.nz/enrolment/maori-option-now/.

(17) Stephen Levine and A. Robinson, *The New Zealand Voter – Survey of Public Opinion and Electoral Behaviour*, Price Milburn, Wellington, 1976; and Heylan Poll in *Auckland Star*, 7 June 1980.

(18) Fleras (1985), p. 564.

(19) Ibid. (1985), p. 565. Section 45 of the *Electoral Act, 1993* provides for the readjustment of Maori ridings every five years, following the census, to reflect changes in the registered Maori population.

as indispensable to Maori political aspirations." As well, the major political parties and some citizens of New Zealand are inclined to maintain the *status quo* until the Maori themselves want change.[20]

C. Australia

In 1992, the High Court of Australia issued its decision in the *Mabo* case. This case is significant because it represented the first time that Aboriginal title was recognized at common law in Australia, when Justices of the High Court decided 6 to 1 in favour of this recognition. The Court also found that Aboriginal title would not be extinguished by general legislation but only by clear and unambiguous action taken by the Crown. Another important feature of the *Mabo* case is the Court's rejection of the concept of *terra nullius*[21].

The Australian government then asked the Chairperson of the Aboriginal and Torres Strait Islander Commission (ATSIC) to suggest further measures the government should consider in light of the *Mabo* decision. In a report to the Prime Minister, the Commission recommended, among other things that:

- the Commonwealth Government investigate the possibility of reserved seats in the Australian Parliament by commissioning a report on how this could be achieved;
- the Commonwealth Government, as an interim measure, introduce legislation to provide the chairperson of ATSIC with the right:
  a. to observer status in the Parliament;
  b. to speak to either House on bills affecting Indigenous interests; and
  c. to make an annual report to the nation on Indigenous affairs; and
- the Commonwealth Government link financial assistance to local government with reforms that encourage greater Indigenous political representation.[22]

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(20) Ibid. (1985), p. 552.

(21) *Terra nullius* refers to land not controlled by any politically or socially organized grouping or state. In the decision in the *Mabo* case, Justice Brennan of the High Court of Australia stated, "The common law of this country would perpetuate injustice if it were to continue to embrace the enlarged notion of terra nullius and to persist in characterizing the indigenous inhabitants of the Australian colonies as people too low in the scale of social organization to be acknowledged as possessing rights and interests in land."

(22) *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures*, Australia, Native Title Social Justice Advisory Committee, 1995, http://www.austlii.edu.au/au/journals/AILR/1996/7.html.

ATSIC remained the primary forum for Indigenous political representation in Australia until 2005. Authorized to allocate part of the government's budget for Aboriginal affairs and to play a role in policy development and implementation, ATSIC worked in conjunction with the ministry dealing with Indigenous affairs.(23) As a result, the organization's mandate included formulating and implementing programs for Indigenous peoples, as well as monitoring the effectiveness of its own and other nominated programs.

However, since ATSIC did not have the authority to act in a specific coordination role or to enforce the collaboration of the Commonwealth, state, and territory governments, the majority of the recommendations emanating from the Commission were never implemented.(24)

In 2005, the government abolished the ATSIC and created a National Indigenous Council (NIC) to replace it. Serving a purely advisory function with no representative role, the NIC comprised Aboriginal members appointed by government.(25)

Following the election of a new government in 2007, the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, did not reappoint NIC members. The NIC was abolished on 31 December 2007, on expiry of its term.(26)

In July 2008, Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma issued a background research paper covering the history of representative organizations in Australia, the situation in other similar countries with Aboriginal populations, and the possible key issues arising from an Australian Indigenous Representative Body.(27)

The Australian government is currently undergoing a consultation on the possibility of an Indigenous representative body and has not yet provided Aboriginal people with reserved seats in Parliament.(28)

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(23) Michael A. Murphy, "Representing indigenous Self-Determination," *University of Toronto Law Journal*, Vol. 58, 2008, pp. 188–90.

(24) Australia, Human Rights Commission, *Building a National Sustainable Indigenous Representative Body: An Issues Paper prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner*, Sydney, July 2008, p. 18, http://www.humanrights.gov.au/social_justice/repbody/.

(25) Murphy (2008), p. 190.

(26) Australia, Human Rights Commission (July 2008), p. 13.

(27) Australia, Human Rights Commission (July 2008).

(28) Australian Department of Families, Housing, Community Services and Indigenous Affairs, *Consultations for the proposed National Indigenous Representative Body*, http://www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/repbody.htm#a1.

D. Maine

The State of Maine is another jurisdiction providing Aboriginal people with guaranteed representation in its legislature. Guaranteed legislative representation for Aboriginal people has been part of the Maine political system for many years. The earliest record of an Indian tribe's having sent a representative to the State Legislature was in 1823, when the Penobscot tribe did so. The Passamaquoddy tribe also realized the goal of being represented by Aboriginal members in the State Legislature as early as 1842.[29] Records have even shown that the practice of sending Indian representatives to the legislature was not new when the new State of Maine was formed in 1820 and may have been practised prior to the Revolutionary War.[30]

Legislation formalizing the election of these Indian representatives was enacted in relation to the Penobscot in 1866 and the Passamaquoddy in 1927. This arrangement was discontinued in 1941, but re-established in 1975. Aboriginal electors in these two tribes are also entitled to vote for candidates on the general electoral ballot. As a result of this dual representation, Indian delegates from these two tribes may not vote on or introduce legislation in the State Legislature. Rule 55 of the *Rules of the House* states that the two Indian representatives:

> shall be granted seats on the floor of the House of Representatives; be granted by consent of the Speaker, the privilege of speaking on pending legislation; and be granted other rights and privileges as may from time to time be voted by the House of Representatives.

The Aboriginal members of the Legislature do, however, enjoy all other privileges of members of the State Legislature.[31]

The United States federal government does not provide for special Aboriginal representation in the Congress. There has been an appeal for Aboriginal representation in the United States House of Representatives, but Congress has so far not acted.[32] The Aboriginal

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(29) Until the election of these tribal representatives was formalized in legislation, the two tribes followed tribal law and custom when choosing representatives for the State Legislature.

(30) S.G. Starbird, Jr., *A Brief History of Indian Legislative Representatives in the Maine Legislature*, State Law Library, Augusta, Maine, January 1983, p. 1.

(31) David C. Hawkes and Bradford W. Morse, "Alternative Methods for Aboriginal Participation in Processes of Constitutional Reform," in *Options for a New Canada*, edited by Ronald L. Watts and Douglas M. Brown, University of Toronto Press, Toronto, 1991, p. 179-180; *Reforming Electoral Democracy: Final Report*, Vol. 1, p. 173; Pond (1992), p. 13; and Starbird (1983), pp. 1–2.

(32) Members of the Cherokee Nation have pushed for political representation. In 1785, the Cherokee Nation and the U.S. government signed the Treaty of Hopewell, which contained a provision at Article 12 that provides the Cherokee Nation with "the right to send a deputy of their choice, whenever they think fit, to Congress." This treaty entitlement has not been exercised. See Jack Blair, "Demanding a Voice in Our Own Best Interest: A Call for a Delegate of the Cherokee Nation to the United States House of Representatives," Vol. 20, *American Indian Review*, p. 225.

groups making this request believe the model already adopted for providing dependent territories with representation in Congress could be adapted for use by American Aboriginal groups. This model allows several dependent territories, such as the U.S. Virgin Islands, Guam, Puerto Rico, American Samoa and the District of Columbia, to have special representation in Congress. The special representatives are allowed to speak and introduce legislation and resolutions in the House of Representatives, speak and vote in House committees, and speak and vote in Committees of the Whole, provided that their vote is not a deciding vote. As in the State of Maine, these special delegates are not permitted to vote on legislation on the floor of the House of Representatives.(33)

THE CANADIAN EXPERIENCE

Neither the federal government nor any provincial or territorial government ensures that Aboriginal people are represented in Parliament or in the legislatures. While there has been little action with respect to guaranteed Aboriginal political representation in Canada, there has been a significant amount of discussion of the issue.

A. The Federal Level

Providing separate and guaranteed electoral districts for Canada's Aboriginal people is not a new proposition; Louis Riel put forward a similar concept in 1870. The idea was also promoted by the Malecite Nation in 1946, George Manuel in the late 1950s, the National Indian Brotherhood in the 1970s and the Native Council of Canada in the 1980s.(34) The Special House of Commons Committee on Indian Self-Government, in its October 1983 report, discussed guaranteed Aboriginal representation in Parliament, though it commented that "the best way to promote Indian rights is through Indian self-government and not by special representation for First Nations in Parliament."(35)

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(33) Canada, House of Commons, Special Committee on Indian Self-Government, *Second Report to the House of Commons*, 20 October 1983, p. 135; and a telephone conversation between the author and officials with the U.S. Embassy in Ottawa, 14 September 1993.

(34) Hawkes and Morse (1991), p. 180, note 22; *Reforming Electoral Democracy: Final Report*, Vol. 1, p. 174; and in "The Provincial Electoral Process: Indian Political Representation," a Submission by the Anishinabek Nation to the Standing Committee of the Legislative Assembly, Government of Ontario, 24 April 1989, p. 14.

(35) Canada, House of Commons, Special Committee on Indian Self-Government, *Second Report to the House of Commons*, 20 October 1983, p. 135.

1. The Report of the Committee for Aboriginal Electoral Reform

In 1991, the issue of Aboriginal representation has been raised by both the Committee for Aboriginal Electoral Reform and the Royal Commission on Electoral Reform and Party Financing. During the hearings of the Royal Commission, it became apparent that the issue required further study. To satisfy this need, the Royal Commission established a working group called the Committee for Aboriginal Electoral Reform, chaired by Senator Len Marchand. The Committee was asked to consult with the Aboriginal community to determine whether the Royal Commission should make a recommendation on Aboriginal electoral districts. After this consultation, the Committee issued a report to the Royal Commission.(36)

The Report of the Committee for Aboriginal Electoral Reform made several recommendations on Aboriginal electoral districts. The most important recommendation was that such districts should be established to provide representation for Aboriginal people in the House of Commons. It also recommended that the creation of Aboriginal electoral districts "not abrogate or derogate from Aboriginal and treaty rights and other rights or freedoms of Aboriginal peoples, including the inherent right of Aboriginal self-government."

The issue of who could vote in these proposed Aboriginal electoral districts was addressed by the Committee. It felt that Aboriginal self-identification should be the fundamental criterion. The Committee also recommended that anyone wishing to challenge the eligibility of those persons on the voters' list should be able to do so. Furthermore, it recommended that an appeal body, controlled by Aboriginal people, should be established to oversee challenges to eligibility for inclusion on the Aboriginal voters' list.

The process recommended by the Committee for determining the number of Aboriginal electoral districts is similar to that used to calculate the number of seats in the House of Commons. The proposed system would see each province's Aboriginal population divided by the provincial electoral quotient, which is determined by dividing the provincial population by the number of seats allocated to the province in the House of Commons, to produce the number of Aboriginal electoral districts. If, for example, the provincial electoral quotient was 100,000 and the number of self-identifying Aboriginal voters within the province was 300,000, the number of Aboriginal electoral districts would be set at three. This process would guarantee Aboriginal representation in Parliament where the number of self-identifying Aboriginal people within a province was high enough to warrant a seat.

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(36) See *Reforming Electoral Democracy: Final Report*, Vol. 4, p. 231, for the full text of the Committee's report.

The Committee also recommended that the electoral boundaries commission be allowed to deviate from the provincial electoral quotient by 25% or more. It "believes that a generous allowable deviation from the electoral quotient is the most effective way of recognizing the diversity of the Aboriginal peoples."[37] It is important to note that deviations of 25% more or less from the electoral quotient are currently permitted to allow the Electoral Boundaries Commission to "respect the community interest or community identity or the historical pattern of an electoral district ... or ... to maintain a manageable geographic size for districts in sparsely populated, rural or northern regions... ." Deviations of greater than 25% can occur, but only in extraordinary circumstances.[38]

During Committee hearings, several participants raised the issue of how the boundaries of Aboriginal electoral districts would be determined. The Committee recommended that treaty boundaries, regional council boundaries, the composition of the Aboriginal population, and the Aboriginal history and relationship to the land should be used as guidelines. It also recommended that Aboriginal people have a voice on electoral boundary commissions so that Aboriginal concerns can be addressed when Aboriginal electoral districts and general electoral boundaries are created or adjusted.[39]

The Committee also stated that Aboriginal electoral districts should be created without the need for a constitutional amendment. To ensure that these districts become a reality and to prevent the federal government from having to obtain the approval of the provinces, the Parliament of Canada would have to act under its own constitutional authority.

If Parliament is to act independently of the provinces, the Committee felt that several conditions must be met. First, Aboriginal electoral districts should be established wholly within the boundaries of those provinces whose Aboriginal population warrants it. Second, the districts would have to be created out of the existing number of federal ridings within each eligible province.[40] Finally, the number and size of Aboriginal ridings would have to follow the formula now in place for determining the number of seats in the House of Commons.[41]

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(37) Ibid., p. 257.

(38) *Electoral Boundaries Readjustment Act*, R.S.C. 1985, c. E-3, s. 15.

(39) *Reforming Electoral Democracy: Final Report*, Vol. 4, pp. 259–60.

(40) For example, if British Columbia was entitled to one Aboriginal electoral district, the number of general electoral districts would be reduced to 35 from 36. (See Table 1.) These constituencies could overlie existing constituencies within the province.

(41) *Reforming Electoral Democracy: Final Report*, Vol. 4, p. 251.

The Committee stated that members of Parliament elected from Aboriginal electoral districts would have the same rights and privileges as other MPs and would participate in the full range of issues before Parliament.(42)

2. The Royal Commission on Electoral Reform and Party Financing

The Royal Commission on Electoral Reform and Party Financing, building on the work of the Aboriginal Electoral Committee, discussed the issue of Aboriginal electoral districts in its *Final Report*.

It noted that several conditions would have to be met before Aboriginal electoral districts could be instituted. These conditions would include: a consensus among Aboriginal people in favour of the measure; ensuring that the implementation of these Aboriginal electoral districts is compatible with Canadian traditions and the parliamentary system; and showing that compelling reasons exist for non-Aboriginal Canadians to support the creation and implementation of Aboriginal electoral districts.(43)

The Commission's discussion of the first condition concluded that it was satisfied that there was a consensus among Aboriginal people favouring the creation of Aboriginal electoral districts. It noted that many groups felt it should be made clear that the creation of separate Aboriginal electoral districts should not detract from, but rather complement, the objective of Aboriginal self-government.

The Commission felt its second condition, that the implementation of Aboriginal electoral districts be compatible with Canadian traditions and the parliamentary system, was also being met. It noted that the adjustment of electoral boundaries for the accommodation of certain minorities and the use of dual-member constituencies have both been practised in Canada. The Commission also stated that entrenching the *Charter of Rights and Freedoms* had enhanced the claims of various groups, including Aboriginal people, to political and constitutional recognition.

The last condition, in the opinion of the Commission, was also satisfied. It felt that Canadians had compelling reasons to support the creation and implementation of Aboriginal electoral districts.(44)(45)

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(42) Ibid., p. 263.

(43) *Reforming Electoral Democracy: Final Report*, Vol. 1, p. 175.

(44) Ibid., pp. 175–8.

(45) In a public opinion poll prepared by Angus Reid in June 1991, shortly after the Royal Commission reported, it was found that three-quarters of Canadians polled were willing to lend their support to a constitutional proposal whereby a fixed number of federal parliamentary seats would be allocated for Canada's Aboriginal peoples.

The Royal Commission believed the creation of Aboriginal Electoral Districts was in no way a substitute for Aboriginal self-government. To make this position even clearer it recommended:

> ... that the *Canada Elections Act* state that the creation of Aboriginal constituencies not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to Aboriginal peoples.(46)

The Royal Commission addressed in its *Final Report* the issue of other ethno-cultural communities who may also wish to have special representation in the federal Parliament. In summarizing the need for Aboriginal constituencies it stated:

> Only the Aboriginal peoples have a historical and constitutional basis for a claim to direct representation. Only the Aboriginal peoples have a pressing political claim to such representation. Only Aboriginal peoples can make the claim that they are the First Peoples with an unbroken and continuous link to this land.
>
> In sharp contrast, Canada's ethno-cultural communities have immigrated to Canada and, in so doing, have exercised free choice to accept the electoral system here.(47)

The Royal Commission's view that the system of special electoral districts should be applied only to Aboriginal people, and not be extended to ethno-cultural communities, was thus made clear.(48)

The Royal Commission stated that Aboriginal electoral districts should be created without the need for a constitutional amendment. It was felt that Parliament could better ensure that such districts become a reality by proceeding under its own constitutional authority. If these new ridings were created as additional ridings within a province, or if they encompassed more than one province, an amendment to the Constitution would be necessary.

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(46) *Reforming Electoral Democracy: Final Report*, Vol. 1, p. 190.

(47) Ibid., p. 183.

(48) The issue of whether or not denying other ethno-cultural groups special parliamentary representation would be an infringement of section 15 of the *Canadian Charter of Rights and Freedoms* has been discussed in *Aboriginal Electoral Reform – A Discussion Paper*, Senator Len Marchand, 1990, pp. 14–16.

The Royal Commission recommended that the number of Aboriginal electoral districts be based, not on total Aboriginal population figures, but on the number of Aboriginals registered to vote in the Aboriginal electoral district.(49) The proposed system would be calculated according to the electoral quotient of the province; that is, the number of registered voters divided by the number of House of Commons seats assigned to the province. The number of registered Aboriginal voters in the province would then be divided by this electoral quotient to give the number of Aboriginal electoral districts. A deviation of 15% from the electoral quotient by the Aboriginal electoral quotient was recommended by the Royal Commission.(50) Only those provinces with an adequate number of registered Aboriginal voters would qualify for an Aboriginal electoral district. Members elected to an Aboriginal electoral district would have all the rights and privileges enjoyed in the House of Commons by other members of Parliament.(51)

Under the current configuration of the House of Commons, seven Aboriginal electoral districts could be created: two in Ontario and one each in Quebec, Manitoba, Saskatchewan, Alberta, and British Columbia. The small size of the Aboriginal populations in the Maritimes(52) and in the Yukon, do not, in the Commission's view, warrant the creation of any Aboriginal electoral districts there. The Commission also concurred with the Aboriginal Electoral Committee that an Aboriginal electoral district was not required in the Northwest Territories. Table 1 provides an outline of the possible composition of the House of Commons if the system of Aboriginal electoral districts proposed by the Royal Commission were adopted.

Table 1 – Possible Distribution of the House of Commons

Province	House of Commons Seats: 2008	Proposed Aboriginal Electoral Districts	General Electoral Districts
Newfoundland	7	0	7
Prince Edward Island	4	0	4
Nova Scotia	11	0	11
New Brunswick	10	0	10

(49) *Reforming Electoral Democracy: Final Report*, Vol. 1, p. 176.

(50) Ibid., pp. 185–9.

(51) Ibid., p. 184.

(52) The Royal Commission supported the Aboriginal Electoral Committee's recommendation that a constitutional amendment be considered providing for an Aboriginal constituency in the Atlantic region: *Reforming Electoral Democracy: Final Report*, Vol. 1, pp. 186–7.

Province	House of Commons Seats: 2008	Proposed Aboriginal Electoral Districts	General Electoral Districts
Quebec	75	1	74
Ontario	106	2	104
Manitoba	14	1	13
Saskatchewan	14	1	13
Alberta	28	1	27
British Columbia	36	1	35
Yukon	1	0	1
Northwest Territories	1	0	1
Nunavut	1	0	1
Canada	308	7	301

Source: This table applies the formula proposed by the Royal Commission on Electoral Reform and Party Financing to the current configuration of the House of Commons, using 2006 Census data.

Many of the Royal Commission's recommendations are similar to those of the Committee for Aboriginal Electoral Reform, though more detailed and specific. These two groups agreed on several issues, including the need to create Aboriginal electoral districts; that Aboriginal self-identification be the criterion for determining Aboriginal voter eligibility; and that the creation of Aboriginal electoral districts should not abrogate or derogate from Aboriginal self-government initiatives. One important difference in the recommendations of these two bodies was to do with the allowable deviation from the provincial electoral quotient to be permitted when determining the number of ridings in a province. The Royal Commission held the opinion that a deviation greater than 15% more or less would:

> diminish the efficacy of the vote of non-Aboriginal communities of interest, especially ethno-cultural communities in urban areas, by requiring that general constituencies in a province contain a proportionately greater number of voters. It is also the case that Aboriginal constituencies would be created whenever the number of Aboriginal voters reached the threshold of the electoral quotient minus 15 per cent; non-Aboriginal communities of interest, on the other hand cannot be assured that electoral boundaries commissions will use this minimum to enhance their efficacy of the vote.[53]

(53) Ibid., p. 188.

The Committee for Aboriginal Electoral Reform, on the other hand, regarded a generous deviation for Aboriginal electoral districts as "necessary to achieve effective representation for Aboriginal people.(54)

3. The Charlottetown Accord

In 1992, the Charlottetown Accord also dealt with the issue of Aboriginal representation in Parliament. The Accord proposed that Aboriginal representation in the House of Commons be studied by Parliament, in consultation with Aboriginal people. This study was to take place following the report of the House of Commons committee studying the report of the Royal Commission on Electoral Reform and Party Financing.(55) The Accord also proposed that Aboriginal Senate seats be created which would be in addition to the existing provincial and territorial seats. The number of Senators, the distribution of the seats, and the method of selection for these new seats were issues to be discussed further by the governments and Aboriginal representatives involved in the negotiations following the referendum. The Accord was not supported in a national referendum, however, and was not pursued.(56)

4. The Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples completed its study in 1996 and as part of its report discussed Aboriginal political representation. The Commission concluded that Aboriginal representation was very low and that an effort should be made to rectify this problem. As part of a solution to this problem the Royal Commission recommended that a third chamber of Parliament be created that would represent Aboriginal people. The Royal Commission's recommendation provided that an Aboriginal Parliament was to be established, after extensive consultation with Aboriginal peoples, that would provide advice to the House of Commons and the Senate on legislation and constitutional matters relating to Aboriginal people. An Aboriginal Parliament would also review reports from treaty commissions, several of the Royal Commission's propositions, and Aboriginal self-government and land claims agreements.(57)

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(54) *Reforming Electoral Democracy: Final Report*, Vol. 4, pp. 257–9.

(55) First Ministers Meeting on the Constitution, *Consensus Report on the Constitution, Final Text*, Charlottetown, P.E.I., 28 August 1992, section 22, p. 8.

(56) Ibid. section 9, p. 4.

(57) Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Vol. 2, Part 1, pp. 379–80.

The Royal Commission also recommended that Aboriginal parliamentarians be elected by their nations or peoples and that these elections should take place at the same time as federal government elections.(58)

5. Bill S-234, the Assembly of the Aboriginal Peoples of Canada Act

On 30 April 2008, a private member's bill was introduced in the Senate aimed at establishing a third chamber of Parliament.(59) The sponsor of the bill, Senator Aurélien Gill, expressed his wish to carry out the recommendation of the Royal Commission on Aboriginal Peoples.

Bill S-234 proposed an assembly for Aboriginal peoples, split into three separate chambers for the First Nations, Inuit and Métis members. According to its sponsor, this assembly would investigate, deliberate, and adopt resolutions concerning constitutional issues relating to Aboriginal peoples. It would also consider, in concert with the Senate and the House of Commons, any motion or bill to amend the Constitution of Canada.

The bill provided that the assembly determine the number of its members, a number that could not exceed that of the maximum number of Senators. In addition, it was proposed that the privileges and immunities of the assembly's members be similar to those enjoyed by the members of the Senate. The power to determine the method of selection of its members and their terms of office was left to the assembly.

The bill planned the establishment of an executive council within the permanent assembly, including one chair and three other members. It would also have allowed for a committee to help it manage its internal governance and seen the mandate of the Auditor General of Canada extended to the third chamber.(60)

The bill died on the *Order Paper* when Parliament was dissolved on 7 September 2008.

6. First Peoples National Party of Canada

In order to focus on self-government, concerns about special representation in Parliament and legislatures were cast aside by Aboriginal leaders in the latter half of the 1990s.(61)

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(58) Ibid., p. 381

(59) Senate, *Debates*, 2nd Session, 39th Parliament, 30 April 2008, p. 1350.

(60) Senate, *Debates*, 2nd Session, 39th Parliament, 7 May 2008, p. 1500.

(61) Trevor Knight, "Electoral Justice for Aboriginal People in Canada," *McGill Law Journal*, Vol. 46, 2001, p. 1077.

However, many Aboriginal peoples continue to maintain that political participation could and has made a difference in policy development. For example, it has been argued that Elijah Harper's action in the Manitoba legislature, including his involvement in 1990 in the demise of the Meech Lake Accord, was a "powerful symbol of the impact of electing Aboriginal legislators."(62)

In recent years, Aboriginal groups have emphasized the rapid growth rate of Aboriginal populations and the potential impact on election results. Voting participation and candidacy nomination are encouraged.(63) In 2008, 30 federal election candidates were of Aboriginal heritage.(64)

The goal of increased participation in Parliament led to the creation of Canada's first federal Aboriginal party in 2006. The First Peoples National Party of Canada ran five candidates in the 2006 federal election and six candidates in 2008. Supporters view the formation of the party as necessary. Doug Dokis, a party candidate in the 2006 election, has argued that "the only way for First Nations people to have their agendas put forward is to participate in the parliamentary system as a distinct party."(65)

The party has yet to win an electoral seat in the House of Commons.

B. The Provincial Level

1. New Brunswick

Discussions on guaranteed Aboriginal representation in a provincial legislature have taken place in New Brunswick. On 14 March 1991, Premier Frank McKenna struck the Representation and Electoral Boundaries Commission, which had as part of its mandate to hold an inquiry and make recommendations concerning: "... the best approach to ensuring that the Aboriginal peoples of the Province are given representation in the Legislature in a manner

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(62) Robert A. Milen, "Aboriginal Constitutional and Electoral Reform," Royal Commission on Electoral Reform and Party Financing, *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert A. Milen, Toronto, Dundurn Press, 1991, p. 33.

(63) First Peoples VOTE, *Interesting Facts and Commentary*, http://www.firstpeoplesvote.com/fpc/stats.htm.

(64) The Forgotten People, *Aboriginal Candidates*, http://www.abo-peoples.org/media/Decision2008three.html.

(65) Darcy Henton, "First nations party remains hopeful," *The Leader-Post* [Regina], 11 September 2008, p. C12.

similar to the approach employed in the State of Maine."[66] The Premier, when announcing the establishment of the Commission, indicated that the representation being proposed for the province's Aboriginal community should be modelled on the system in place in that State. The Premier's proposal would see one or two Aboriginal seats added to the Legislative Assembly, which currently has 58 members.[67]

After completing the initial inquiry and consultations, the Representation and Electoral Boundaries Commission released its first report, "Towards a New Electoral Map for New Brunswick." The report was filed with the New Brunswick Legislature on 15 July 1992. One of the recommendations in the report was "that a joint committee of specified size and composition be struck (by the Select Committee of the Legislature) to consult with the Aboriginal community to further explore the representation issue and to make recommendations concerning the implementation of such recommendations."

The Legislative Assembly referred the report of the Commission to the Select Committee on Representation and Electoral Boundaries, which reported its findings on 1 December 1992. The Select Committee report recommended that "the Representation and Electoral Boundaries Commission not initiate further consultation with the Aboriginal community with reference to their representation in the Legislative Assembly of New Brunswick unless the native community requests such a consultative process."[68] The legislature concurred in the recommendations of the Select Committee Report on 8 December 1992.[69] The issue of guaranteed seats for Aboriginal people remained dormant for several years but was again revived by Premier Camille Theriault in a meeting with provincial Aboriginal leaders on 22 January 1999. At this meeting, Premier Theriault suggested that the province was willing to be the first provincial legislature in the country with guaranteed seats for Aboriginal people.[70] Aboriginal leaders agreed to study the proposal more closely, but eventually decided that accepting these two seats could undermine any future claims for sovereignty.[71]

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(66) Order in Council #91-174, dated 14 March 1991.

(67) Kevin Cox, "N.B. Seat Proposed for Natives," *The Globe and Mail* [Toronto], 19 March 1991.

(68) "Towards a New Electoral Map for New Brunswick," *First Report of the Representation and Electoral Boundaries Commission*, July 1992; and the *First Report of the Select Committee on Representation and Electoral Boundaries*, 1st Session, 52nd Legislature, Province of New Brunswick, 1 December 1992.

(69) *Journal of Debates (Hansard)*, Legislative Assembly, Province of New Brunswick, 8 December 1992, p. 4684.

(70) "N.B. Chiefs Like Premier's Offer of Seats for Aboriginals," *National Post*, 3 February 1999, p. A4.

(71) "Chiefs Reject Offer of Guaranteed Seats in N.B. Legislature," *National Post*, 25 March 1999, p. A5.

2. Quebec

The Province of Quebec was at one time said to be investigating the possibility of creating separate provincial Aboriginal ridings. Amendments to the provincial electoral Act would have provided for up to two designated Aboriginal seats in the National Assembly. In the early 1990s, Christos Sirros, Native Affairs Minister for the province in the Liberal administration, believed that this initiative would help improve relations between Aboriginals and other Quebeckers.(72)

In October 2002, Premier Bernard Landry, leader of the Parti Québécois, expressed support for the creation of a special Inuit riding in Nunavik, a northern region largely populated by Inuit.(73) Following the election of a Liberal government in 2003, Premier Jean Charest called for public debate on the matter and promised to revisit this riding proposition at a later, more opportune time.(74)

In 2007, Inuit of the Nunavik region in Northern Quebec signed an agreement with provincial and federal government representatives to establish a semi-autonomous regional government in 2009. The agreement allows for a regional elected assembly and the control of many government services, such as health, education, social services, and public administration of funds received by the provincial and federal government. Unlike in the case of Nunavut, the agreement does not warrant full sovereignty; Nunavik will stay under Quebec's jurisdiction.(75)

Following this agreement, Premier Jean Charest reiterated his interest in the creation of a 126th Nunavik riding in the province and struck a consultation committee on the topic.(76) The *Commission de la représentation électorale* submitted its proposed preliminary delimitation of electoral ridings report in March 2003 with no additional riding in the northern

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(72) "Aboriginal Seats in National Assembly Would Help Ease Tensions, Sirros Says," *The Gazette* [Montréal], 10 February 1994; "L'idée de comtes autochtones intéresse Sirros," *La Presse* [Montréal], 10 February 1994, p. B-1; "Sirros Prudent," *Le Devoir* [Montréal], 10 February 1994, p. A-4.

(73) Alison Hanes, "Inukshuk brings Inuit closer to seat of power: Premier Landry agrees to consider setting up a separate seat to represent Nunavik," *The Gazette* [Montréal], 25 October 2002, p. A15.

(74) Benoît Pelletier, "Un gouvernement autonome dans quatre ans," *Le Devoir* [Montréal], 23 August 2003, p. A2.

(75) Marianne White, "Nunavik deal inked," *The Gazette* [Montréal], 6 December 2007, p. A13, and Tommy Chouinard, "Les Inuits auront leur gouvernement régional," *La Presse* [Montréal], 6 December 2007, p. A8.

(76) Michel Corbeil, "Les consultations débutent pour faire place à un 126e député," *Le Soleil* [Québec], 7 December 2007, p. 12.

Quebec region. Following a series of public hearings, the final report is expected to be submitted in November 2008.(77)

3. Nova Scotia

On 24 May 1991, the Premier of Nova Scotia proposed a motion in the House of Assembly calling for the creation of a Provincial Electoral Boundaries Commission and a Select Committee of the House of Assembly. The motion in part called on the House to support the principle of adding one member to represent the Mi'kmaq people of Nova Scotia. The Select Committee was to formulate the terms of reference and mandate for the Provincial Electoral Boundaries Commission. The motion was passed by the House immediately following its introduction.(78)

The Select Committee reported back in July 1991, charging the Provincial Electoral Boundaries Commission with the task of redrawing the province's electoral boundaries with the addition of one guaranteed Aboriginal seat. The Commission was also instructed to consult thoroughly with the province's Mi'kmaq community before making recommendations concerning the guaranteed Aboriginal seat.(79)

The Provincial Electoral Boundaries Commission reported in March 1992, with an important recommendation concerning the guaranteed Aboriginal seat. The Commission suggested that:

> On the basis of the consultation process with, and at the request of the Mi'kmaq community, the Provincial Electoral Boundaries Commission hereby recommends that this proposed Mi'kmaq seat in the Nova Scotia House of Assembly not be implemented at this time.
>
> However, because the Mi'kmaq people have expressed an interest in a legislative position of some kind, but are not prepared to make a final decision within the time frame under which the Commission must report to the Legislature, the Commission recommends that the House of Assembly adopt a procedure, including an appropriate budget and tentative deadline, for further consultation with the Mi'kmaq people.(80)

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(77) Commission de la representation électorale, Preliminary Report, http://www.lacartechange.qc.ca/lacartechange/document/rapport_preliminaire/rapport-pre-WEB-va.pdf.

(78) Nova Scotia, House of Assembly, *Hansard: Debates and Proceedings*, 24 May 1991, pp. 5844–6.

(79) Nova Scotia, House of Assembly, *Report of the Select Committee on Establishing An Electoral Boundaries Commission*, July 1991.

(80) Nova Scotia, Provincial Electoral Boundaries Commission, *Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission*, March 1992, p. 79.

No further action was taken by the Government of Nova Scotia on this matter.

The matter arose again in 1994, when a group of Nova Scotia Mi'kmaq chiefs stated that they were prepared to propose that two seats be set aside in the provincial legislature for Aboriginal people, if this would not jeopardize their Aboriginal rights under federal law. It was proposed that one seat would be established for Cape Breton and the other would encompass mainland Nova Scotia. Premier John Savage had suggested earlier that it would be up to the Mi'kmaq chiefs to submit a proposal on the matter and that his government was open to the idea. No further action was taken on this matter.(81)

4. The Northwest Territories and Nunavut

On 1 April 1999, the new territory of Nunavut was created. While this step had been the subject of debate for decades, it had really come to the forefront in the last 18 years. In 1982, a plebiscite was held in the Northwest Territories to gauge public support for dividing the Northwest Territories and creating two new territories. In this plebiscite, 56.6% of the voters cast ballots in favour of this proposal. Inuit of Nunavut and the federal government reached an agreement in principle on the Inuits' comprehensive land claims in 1990. Part of this agreement in principle committed the federal government, the government of the Northwest Territories and Tungavik Federation of Nunavut to negotiate a political accord setting out the powers, principles of financing, and timing for the establishment of the Nunavut government. The parties formally signed a political accord in 1992 and the commitment to create the new territory of Nunavut was included in the text of the final land claims agreement.(82) The federal legislation providing for the establishment of the territory and setting out the legal framework for the new government was enacted in 1993.(83) As a result of the first election for the new territory of Nunavut, held on 15 February 1999, 19 members were elected to the Legislative Assembly. Of the population of 29,325 in the new territory of Nunavut, approximately 84% are Inuit. While the legislation establishing the new territory does not guarantee seats for Aboriginal people, Inuit clearly have the ability to control their own electoral destiny. This differs from the situation in the Northwest Territories where Aboriginal people make up approximately 50% of a population of 41,060.(84)

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(81) "Micmacs Seek Two Seats in Nova Scotia Legislature," *Halifax Daily News*, 22 March 1994.

(82) Jill Wherrett, *Creation of Canada's Two New Territories*, prepared for the Commonwealth Parliamentary Association, 37th Canadian Regional Conference, Toronto, Canada, 29 June 1998, pp. 2–3.

(83) *Nunavut Act*, S.C. 1993, c. 28.

(84) Statistics Canada (15 January 2008).

The political development of the western Northwest Territories has been different from that in Nunavut. Aboriginal land claims have yet to be settled in several regions of the new Northwest Territories and a number of Aboriginal groups are engaged in self-government negotiations with the federal government. The challenge is how to blend the desire of Aboriginal groups in the Northwest Territories for some form of self-government, with the public government structure currently in place there. Following on earlier work by the Constitutional Development Steering Committee, in 1996 a Constitutional Working Group was formed to produce a comprehensive draft constitutional package for submission to the Northwest Territories Legislative Assembly. This package, *Partners in a New Beginning*, was released in October 1996. One of its proposals was that Aboriginal people be provided with guaranteed seats in the territorial legislature.(85) The proposal as it was originally presented called for a 22-seat legislature, with 14 seats being elected by all voters and the remaining eight seats being elected by Aboriginal voters only.(86) This proposal was not enacted and no further action has been taken on this matter.(87)

Both the Northwest Territories and the Nunavut governments currently use "consensus government," whereby elected members are not members of a party. Rather than having a specific party forming a government following a general election, the members elect from among themselves a member to be Speaker, another to be premier, and several others to be Cabinet ministers. The absence of party structures allows each member to vote freely on any subject matter; any decision requires the agreement of a majority of members.(88) Attempts to discontinue this form of government were made in the 1999 territorial general elections. The NDP ran 6 candidates unsuccessfully.(89) Despite discussions to change this type of government, the Northwest Territories and Nunavut continue to use a consensus model.

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(85) Wherrett (1998), pp. 6–7.

(86) "Aboriginal Seats Guaranteed in Plan for Western Arctic," *Halifax Daily News*, 17 October 1996, p. 44.

(87) *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22.

(88) "Party Politics Introduced," *The National Post*, 26 October 1999, p. A4.

(89) CBC NEWS online, *N.W.T. shuts out NDP, opts for consensus*, 7 December 1999, http://www.cbc.ca/canada/story/1999/12/07/nwt991207.html.

CONCLUSION

Government-Aboriginal relations have changed dramatically in the last century. As Aboriginal minorities press for more input into decisions affecting their lives, governments will require greater creativity in changing the way they operate.

The international experience has shown that a system providing for Aboriginal representation can function in a parliamentary system. Several jurisdictions providing their indigenous minorities with political representation have been examined. Finland, Norway and Sweden have found a unique way of providing their indigenous populations with guaranteed input into the political process. Each country has established a separate Sami Parliament that acts as an advisory body to the national Parliaments and other state organs on issues affecting the Sami, though it does not have the power to make binding recommendations to these bodies.

New Zealand's election law provides for 7 elected Maori members, who will have the same powers and privileges as the other members of the House of Representatives to be elected in the upcoming 2008 general election. This system of guaranteed Aboriginal representation has been criticized on social and structural grounds. The 7 Maori seats do not come close to providing the Maori, who represent approximately 14.6% of the population, with electoral representation equivalent to that of voters on the general electoral roll. Recent changes to the electoral system have, however, resulted in the election of 21 Maori members to the New Zealand House of Representatives.

The State of Maine has also had a long history of providing Aboriginal people with political representation, though the State has not expanded the system over the years to allow Indian representatives to vote on or introduce legislation.

While consideration of the idea of providing Aboriginal representation in Parliament is in its infancy in Canada, some helpful study and discussion has already taken place. At the federal level and in several provinces and territories, proposals to create some form of Aboriginal electoral districts have been put forward. While useful discussions and proposals have come out of the initial studies, no action has been taken towards creating Aboriginal seats. Further study by governments and the Aboriginal community may be required if an idea with considerable merit is to be brought to fruition.